

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Oak Hill Post Office
Oak Hill, Alabama

Docket No. A2011-97

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

December 7, 2011

I. INTRODUCTION

On September 28, 2011, the Commission received a petition for review of the closing of the Oak Hill, Alabama Post Office (Oak Hill Post Office).¹ On November 2, 2011, the Commission also received a petition signed by 33 customers seeking to participate in the appeal of the Postal Service decision to close the Oak Hill Post Office. That decision, which is the subject of this proceeding, was made on August 22, 2011.²

On September 30, 2011, the Commission issued an order instituting the current review proceedings, appointing the undersigned Public Representative, and establishing a procedural schedule.³

¹ An Appeal to USPS to Reconsider Closing the Oak Hill, AL 36766 Post Office, September 28, 2011 (Petition for Review).

² Final Determination to Close the Oak Hill, AL Post Office and Continue to Provide Service by Independent Post Office, August 22, 2011 (Final Determination). The Final Determination was included as Item No. 47 in the Administrative Record (AR) filed by the Postal Service on October 13, 2011. Citations to the Final Determination will use the abbreviation "FD" followed by the page number, rather than to AR Item No. 47. All other items in the Administrative Record are referred to as "AR Item No. ____"

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 30, 2011 (Order No. 890).

II. STATEMENT OF FACTS

The Oak Hill Post Office is located at 10525 Highway 10 E, Oak Hill, Alabama, 36766-9998, an incorporated community in southwest Alabama.⁴ The Oak Hill Post Office provides service to 66 post office box customers, and retail customers who purchased such products and services as stamps, money orders, registered and certified letters, and Express Mail. AR Item Nos. 13 and 10. There are no postage meter customers or permit mailers serviced by the Oak Hill Post Office, and carrier route service is not administered by the office.⁵

On January 24, 2011, the Postal Service notified customers of the Oak Hill Post Office of a "possible change in the way your postal service is provided." AR Item No. 21. As described in the notice, customers would continue to receive carrier pickup and delivery services, and be able to purchase stamps and all other customer postal services, from rural route carriers emanating from the Pine Apple, Alabama 36753-2000 community post. *Id.* Customers with post office boxes at the Oak Hill Post Office were informed post office box service "is available at the [Pine Apple] location at the same fees." *Id.* The Pine Apple office is located approximately 6.7 miles away. *Id.* Customers were also invited to attend a public meeting on March 16, 2011, where postal representatives "would answer questions and provide information about our service." The meeting was held on March 16th as scheduled with 71 customers indicating attendance. AR Item No. 24. In addition, customers were asked to complete and return a questionnaire accompanying the notice by the date of the public meeting. AR Item No. 21.

On August 22, 2011, the Final Determination to close the Oak Hill Post Office was posted. The decision to close was based upon (1) a decline in workload; (2) effective and regular service will continue to be provided by rural route service

⁴ AR Item Nos. 4 and 5; Participant Statement, November 3, 2011 (Petitioner Brief), at 6.

⁵ AR Item Nos. 15 and 13. It appears carrier delivery service to customers in the Oak Hill area is administered by the community post office in Pine Apple, Alabama. AR Item No. 33.

emanating from the Pine Apple office; and (3) estimated annual savings to the Postal Service of approximately \$37,805. FD at 2 and 13. The Final Determination also responded to various concerns expressed by postal customers in the questionnaires and at the March 16, 2011, public meeting. *Id.* at 2-11.

III. POSITIONS OF THE PARTIES

A. The Petitioner

In its initial brief filed November 3, 2011, Petitioner argues that the decision to close the Oak Hill Post Office was arbitrary and capricious. Petitioner Brief at 5. Petitioner advances numerous comments in support of its argument, and proposes a number of alternatives to reduce costs so as to retain service at the Oak Hill Post Office. The Petitioner Brief also requests suspension of the closure of the Oak Hill Post Office by the Postal Service pending a decision by the Commission on the Petition for Review. *Id.* at 1.

B. The Postal Service

In PRC Order No. 890, the Commission directed the Postal Service to “file the applicable administrative record in this appeal.”⁶ On October 13, 2011, the Postal Service provided the administrative record.⁷

On November 17, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 890.⁸ In that filing, the Postal Service argues that: (1) it has met all the procedural requirements of section 404(d); and (2) it has considered all pertinent criteria, including the effect of the closing on postal services, the

⁶ Order No. 890 at 5. .

⁷ United States Postal Service Notice of Filing, October 13, 2011 (Notice). The Notice stated that the Postal was filing an electronic version of the administrative record concerning the Final Determination to Close the Oak Hill, AL Post Office and Continue to Provide Service by Independent Post Office

⁸ United States Postal Service Comments Regarding Appeal, November 22, 2011 (Postal Service Comments).

community, employees, and the economic savings from the discontinuance of the Oak Hill facility. *Id.* at 2-16.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service. Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal.

B. The Law Governing Postal Service Determinations

Prior to making a determination to close or consolidate a post office, 39 U.S.C. §404(d)(1) requires that the Postal Service shall provide adequate notice of its intention at least 60 days prior to the proposed date of such action to persons served by such post office to insure they have an opportunity to present their views. The Postal Service's rules require posting of the Final Determination for at least 30 days. 39 CFR 241.3(g)(1)(ii).

In addition, prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404(d)(2) to consider: (i) the effect

of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

The Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

The Postal Service also has regulations prescribing its requirements for closing post offices. 39 CFR 241.3.

V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After reviewing the Postal Service's Final Determination, the materials in the Administrative Record, the contentions presented in the Petitioner Brief, and the Postal Service Comments, the Public Representative believes that the Postal Service's posting procedures have not complied with its own rules. No notice was provided to the affected customers at the Pine Apple office as required by the Postal Service's rules. Consequently, remand is warranted to provide an opportunity for Postal Service notice and comment from affected customers of the Pine Apple office arising from the decision to close the Oak Hill Post Office.

The Postal Service's Final Determination also fails to satisfy the standards of section 404(d). The Final Determination's analysis of the effect on employees of closing the Oak Hill Post Office is inadequate as it relates to the calculation of economic

savings, which are overstated.⁹ These flaws rise to the level of a failure to consider sufficiently the factors required by section 404(d) and the Final Determination should be remanded.

Finally, the Commission should grant petitioner's application for a suspension of the closure of the Oak Hill Post Office pending a decision on the merits of the appeal by the Commission.

A. Required Notices of Proposal and Final Determination Were Not Provided

The Postal Service has not complied with law as set forth in its own rules regarding the procedural requirements for posting Proposals and Final Determinations. The Postal Service's rules require posting of Proposals at "each affected post office." 39 CFR 241.3(d)(1). Based on the Administrative Record, posting of the Proposal to Close and Final Determination occurred only at the Oak Hill Post Office. AR Item No. 33, and FD at 1. The Pine Apple office is clearly affected as it will be the administrative office for rural delivery carriers in the Oak Hill delivery area. In addition, the Pine Apple office will receive some business from the customers now using the Oak Hill Post Office.

Although neither the Petitioner nor any other postal customer objected to failure to comply with the Postal Service's rules, customers should not be expected to police Postal Service compliance. Moreover, no one knows whether the failure to post the Proposal and Final Determination in the Pine Apple office precluded any customer comments. It is clear, however, that the failure to post effectively denied customers the opportunity to comment.

⁹ The third required statutory consideration in section 404(d)(2)(A)(iii) is whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining." It appears that effective and regular service will be maintained after the closing of the Oak Hill Post Office and that requirement is therefore met. See Postal Service Comments at 5 - 12.

The question of compliance regarding posting the Proposal and Final Determination turns on whether the Pine Apple office will be affected by the closing. Under the Postal Service's procedural rules in effect for this proceeding, the Proposal is to be posted "in each affected post office." 39 CFR 241.3(d)(1). This rule has recently been modified and its application clarified although, strictly speaking, the new rules are not applicable to this closing process. Nevertheless, under the newly modified rules, there is no question that the Pine Apple office is affected. According to the new rules, the Proposal must be posted prominently at any retail facility "likely to serve a significant number of customers of the USPS-operated retail facility under study." 39 CFR 241.3(d)(1)(iii).¹⁰ The delivery service out of Pine Apple office will serve a number of Oak Hill customers. The Administrative Record is devoid of evidence that the Proposal and Final Determination was posted at the Pine Apple office. The record therefore does not affirmatively demonstrate the posting requirement was met at the Pine Apple office and the case should be remanded on this point alone.

B. The Decision to Close the Oak Hill Post Office Does Not Meet All Requirements of 39 U.S.C. §404(d)

1. Economic Savings

Section 404(d) requires consideration of "the economic savings to the Postal Service resulting from such closing." This requirement is impacted to a considerable degree by another requirement of Section 404(d): the effect on employees of the Postal Service at the Oak Hill Post Office. The Postal Service estimates annual savings of \$37,806 from closure of the Oak Hill Post Office. FD at 12. Most of these savings are attributable to "Postmaster Salary (EAS-55, No COLA)" of \$25,584 and fringe benefits of 33.5 percent, or \$8,571. *Id.* The Postmaster at Oak Hill retired in November of 2010 and has not been replaced. Since the postmaster vacancy, an Officer-In-Charge (OIC)

¹⁰ See 76 Fed. Reg. 41423, July 14, 2011.

has operated the Oak Hill Post Office as a noncareer Postmaster Relief (PMR). *Id.* No other employee will be adversely affected. *Id.*

Neither the Petitioner nor any other postal customer directly challenges the Postal Service's calculation of economic savings of \$37,806. Instead, the Petitioner (and customer comments) questions whether the savings are so significant to the Postal Service as to warrant closure of the Oak Hill Post Office. Petitioner Brief at 4; *see also* FD at 9. Petitioner also proposes various changes to facility operation in order to save cost and thereby retain service at the Oak Hill Post Office. Petitioner Brief at 4.

Nevertheless, the Public Representative considers the Postal Service's calculation of economic savings based upon the salary and benefits of an EAS-55 Postmaster to be faulty and therefore cannot stand up to scrutiny. The Postal Service currently enjoys economic savings arising from installing an OIC with a reduced salary and no benefits rather than replacing the EAS-55 Postmaster. Thus, the Postal Service's calculation of cost savings must begin with the elimination of costs currently being incurred at Oak Hill Post Office *if that office is closed*. Cost saving calculations based upon the salary and benefits of a future EAS-55 Postmaster *if the Oak Hill Post Office remains open* are fictitious. If the Oak Hill Post Office remains open the Postal will incur costs, not cost savings. Therefore, it is simply wrong to calculate economic savings based upon future Postmaster costs involving the possible continued operation of the Oak Hill Post Office when the costs to be saved are the real salary costs of the OIC upon closure of Oak Hill. The salary and benefits of the EAS-55 Postmaster should be replaced with the salary of the OIC in the calculation of economic savings.

Moreover, the Postal Service's calculation of economic savings is faulty in another respect. The claim that the noncareer OIC may be separated from the Postal Service simply identifies one obvious outcome for the OIC. The obvious other alternative outcome is that OIC may be transferred to another office or may otherwise continue employment with the Postal Service. The Postal Service provides no basis for determining whether the OIC will be separated from or will continue employment with the Postal Service. Nevertheless, the Postal Service calculates cost savings as if the

OIC will be separated from Postal Service. Unless and until the Postal Service provides a justification for considering that there will be a reduction in employment associated with closure of the Oak Hill Post Office, the inflated economic savings claimed by the Postal Service should be reduced by the amount of OICs salary.

2. Application for Suspension of Closure

Petitioner makes application for suspension of the closure of the Oak Hill Post Office. Petitioner Brief at 1. The Petitioner's application is uncontested by the Postal Service. The Commission should approve this application. To the extent the Postal Service has decided to keep the Oak Hill Post Office open pending the Commission's decision on appeal, this application is moot.

VI. CONCLUSION

The Postal Service's Final Determination to close the Oak Hill Post Office should be remanded to the Postal Service to remedy the deficiencies identified above.

Respectfully Submitted,

/s/ James F. Callow

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